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Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. .....

JOSE A. REYES,

Petitioner,

v.

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION NO. 16, and ELOY ORTEGA, President, RAY MASCARENAS, Vice President, FRED SANDOVAL, Business Manager, JOHN YANES, Recording Secretary, GEORGE QUINTANA, Executive Board Member, REMIGIO MARTINEZ, Executive Board Member, FRUTOSO CHAVEZ, Secretary-Treasurer, ALEX ARCHULETA, Past Secretary-Treasurer, and WILLIE HORCASITAS, Member,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

GEORGE CHERPELIS
PICKERING & CHERPELIS
920 Ortiz Drive, NE
Albuquerque, N. M. 87108
Attorney for Petitioner
Jose A. Reyes

Of Counsel:

LEONARD L. PICKERING
PICKERING & CHERPELIS

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Petitioner, Jose A. Reyes (hereinafter Reyes) prays that a Writ of Certiorari be issued to review the judgment of the United States Court of Appeals for the Tenth Circuit entered in this case on July 17, 1972.

Opinions Below

The Memorandum Opinion and Order of the District Court for the District of New Mexico (Appendix A) is reported at 327 F. Supp. 978. The Opinion of the Court of Appeals for the Tenth Circuit (Appendix B) is reported at 464 F.2d 595.

Jurisdiction

The Court of Appeals filed its Decision on July 17, 1972. A Petition for Rehearing and Suggestion for Rehearing En Banc was filed by Petitioner on August 29, 1972, in accordance with Rule 40 and Rule 35, Federal Rules of Appellate Procedure. That Petition was denied by Order dated September 7, 1972 (Appendix C).

The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

Questions Presented

The questions presented are:

1. Whether or not there was compliance with the statutory safeguard set forth in 28 U.S.C. 411(a)(5), in connection with the charges and subsequent Union trial of Reyes thereupon, particularly when the members of the trial board refused to disqualify themselves as demanded by Reyes due to their interest, involvement and bias with reference to the subject matters of the charges. The basic issue in this connection is whether or not Reyes received a "fair and impartial hearing" when all members of his trial Board were elected officials of the Union and he was being tried upon the charges that "he further slandered the President, Business Manager, and the International Union by charging all were crooked and sold the members out . . . On the occasions mentioned above and on other occasions, he has deliberately used vulgar and profane language in referring to the elected Union officials and the International Union." And when all such elected Union officials, who constituted his trial board, were the principal and sole witnesses to most all other acts which were included in the charges upon which he was tried by such

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elected Union officials, this question may be put more succinctly as, "Can a Judge fairly, impartially, and without bias, determine whether or not the accused has defamed and slandered the Judge?"

2. Whether or not the Courts below erred in limiting their review of the disciplinary proceedings against Petitioner solely to a determination of whether or not the Respondent Union had complied with the safeguards provided in —— U.S.C. Section 411(a)(5), and whether or not a proper determination has been made by the Courts below even upon this basis in view of question No. 1.

3. Whether or not the Courts below are bound to look behind the superficial record of disciplinary hearings against Petitioner and seek to determine whether or not in fact Petitioner received a fair and impartial trial and whether or not in fact Petitioner's rights as a Union member were violated.

4. Whether or not Petitioner could be suspended from attending Union membership meetings and otherwise participating in the affairs of his Local Union for a period of three years for having exercised his freedom of speech in questioning the conduct of Union affairs by its officers, by criticizing their conduct, by inquiring into the financial affairs of the Union and the propriety of the activities of the Union's officers in connection therewith, and, finally, for his insistence, as a point of order, that unauthorized persons not be permitted to remain in the Union meeting, their presence being contrary to the Union's Constitution and By-laws. This final issue resulted in the charges being filed against him. Petitioner contends, contrary to the findings of the Court below, that his suspension from attending

Union membership meetings for a period of three years resulted solely from his having exercised his rights as a Union member and, thus, was in violation of the protection guaranteed him under the Labor Management Reporting and Disclosure Act of 1959.

Statement of the Case

Petitioner, as a member of Respondent Local Union for a number of years, had been very active and vocal in the participation of Local Union affairs, having held both elective and appointive offices therein, and having on numerous occasions been a candidate for various Union offices. During the course of his active participation in such Union affairs, Petitioner had incurred the animosity of the individual Respondents who were his political opponents and antagonists within the Union. At various times, Petitioner accused said individual Respondents of improperly representing the interest of the Local Union members, improperly handling and disbursing Union funds, and otherwise breaching their fiduciary duties to the Local Union and its members.

Prior to his trial and suspension from the Union, Petitioner was active in filing petitions with the Secretary of Labor and various U. S. Senators and Congressmen requesting investigation into the affairs of the Respondent Local Union and the individual Respondents. Furthermore, prior to the charges having been filed against him, Petitioner and others who supported his demands for an investigation into Local Union affairs, had been threatened with suspension by an International Representative of Respondent Union. That same International Representa-

tive collaborated with and assisted Local Union President and Respondent Eloy Ortega in the preparation of the charges filed by Ortega against your Petitioner, and participated in the trial as ex officio member of the trial board.

Shortly prior to the filing of the charges against him, of which he was later found guilty, Petitioner had been a candidate among a slate of candidates who had been unsuccessful in a Union election. Petitioner had filed a protest pertaining to certain irregularities in connection with the conducting of such election, which protest was successful and resulted in a second election being scheduled and conducted. However, said second election was conducted after the filing of charges against Petitioner and his suspension from participation in Union affairs, thus eliminating Petitioner's further participation in the election and Union political affairs.

At a regular meeting of the Local Union, held on August 9, 1969, Petitioner raised a point of order with the Chairman, Respondent Eloy Ortega, protesting the presence of certain unauthorized persons at the meeting. Moreover, Petitioner moved that such unauthorized persons be excluded from the meeting. Upon being ruled out of order by the Chairman, Respondent Ortega, other members also raised the same point of order, and rather than accede thereto Respondent Ortega adjourned the meeting.

Immediately thereafter, Respondent Ortega filed charges against Petitioner and directed Petitioner to appear before the Union trial board in connection therewith. Petitioner sought to disqualify members of the Executive Board, whom he had accused of misfeasance, from sitting as members of his trial board on the grounds that, as interested

parties, they would not and could not afford him a fair and impartial trial nor render an objective decision as required by the Union's Constitution.

The members of the Union's Executive Board, which constituted the trial board, who refused to disqualify themselves at Reyes' request, were all elected Union officials and the top officers of the Union whom Reyes was accused in the charges of having slandered, called crooked, then accused of having sold the members out, and with respect to whom he was charged with having used vulgar and profane language in referring to such elected officials. The charge states in full as follows:

"To: John Yanes, Secretary Local 16
Charges against J. Reyes (Adan Z.)
Book Number 11137

"1. I charge J. Reyes Book Number 11137 with violation of the Uniform Local Union Constitution Article III Section 3 Paragraphs d, e, f and g.

"Brother Reyes did, on or about, August 9, 1968, attempt to incite violence against the Local Union President among approximately 15 members outside the Union Hall between the hours of 3 p.m. and 5 p.m. He incited members under the influence of alcohol to come into the Union office to fight the Union President. He further challenged the President to come outside and fight all 15 of the men.

"He further slandered the President, Business Manager and the International Union, by charging all were crooked and sold the members out. He went outside and brought in Rufino Martinez for the purpose of creating a disturbance in the Union offices. Brother

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Martinez had previously been put under peace bond for cursing and creating disturbance and striking the local Union President with a full can of beer.

"At about 7:30 p.m. Brother Reyes attended the Local Union meeting on the same date and immediately upon the meeting being called to order began disrupting the meeting by insisting on speaking after the Chair had repeatedly called him to order. He encouraged others to interfere with the proper conduct of the meeting until it became necessary for the Chairman to adjourn the meeting.

"On the occasions mentioned above and on other occasions he has deliberately used vulgar and profane language in referring to the elected Union officials and the International Union.

/s/ ELOY ORTEGA
President, Local 16"

The uncontradicted record facts disclosed that most all such members of the Executive Board and trial board were the principal and only witnesses to all of the acts alleged in the charges with the single exception of the reference to the Union meeting.

Petitioner's attempt to disqualify the individual Respondents herein, whom he had accused of misfeasance as Union officers, from sitting in judgment of him, was futile. Accordingly, he was tried by a trial board composed of the individual Respondents herein, whom he had accused of misfeasance in office, on charges initiated by a member of that trial board, Respondent Ortega, who disqualified himself for the record and then participated in the trial as Prosecutor along with the International Representative.

As a result of the decision of that trial board, Petitioner was suspended from attending Local Union meetings for a period of three years and was fined the sum of $250.00. Upon appeal to the International Union, the suspension was upheld, but the fine reduced to $100.00.

Your Petitioner sought to redress his rights by bringing an action against Respondent pursuant to the provisions of the Labor Management Reporting and Disclosure Act of 1959, 29 USC Section 401, *et seq.* In his Complaint, your Petitioner alleged that, as a member of Respondent Local Union, he was denied his equal rights and privileges within such organization to nominate candidates, to vote in elections or referenda of the labor organization, to attend membership meetings and to participate in the deliberations and voting upon the business of such meetings, all as provided in 29 USC Section 411(a)(1).

Your Petitioner further alleged that, as a member of Respondent Local Union, he was denied his right to meet and assemble freely with other members; and to express his views, arguments, and opinions; and to express at meetings of said Respondent Local Union, his views upon candidates in an election of Respondent Union or upon any business properly before the meeting, all as provided in Section 401(a)(2).

Your Petitioner further alleged that he was fined and suspended contrary to the provisions of Section 401(a)(5) in that he was not afforded a full and fair hearing because his accusers acted as his judges.

The Trial Court in its Memorandum Opinion and Order[1] issued on June 11, 1971, while acknowledging that due

[1] Appendix A.

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process under the Labor Management Reporting and Disclosure Act requires more than mere adherence to mechanical formalities, and that the Court may thus scrutinize the entire proceedings and surrounding circumstances to determine whether or not the institution of the charges against your Petitioner was properly motivated, found that the charges brought against your Petitioner and the sanctions invoked were for reasons other than Petitioner's having expressed and advocated his personal views and exercised his statutorily protected rights.

On appeal, the Court below found that your Petitioner was an active and vocal member of Respondent Local Union; that he had previously opposed the Local Union management on a slate of opposing candidates in an election which he successfully had set aside; that he had sent various letters to U.S. Senators and Representatives alleging embezzlement and breach of fiduciary duties by Respondent Local Union's officers and requesting investigations thereof; yet, in spite of these findings, the Court of Appeals found the Trial Court to have correctly interpreted its role in reviewing the Union disciplinary proceedings. In so finding, the Appeals Court went on to say:

> "That Court, when reviewing such disciplining action is not free to substitute its judgment for that of the Union; it must uphold the Union's findings if supported by an *unbiased trial body* which afforded a *fair and impartial determination of guilt.*" (Footnote omitted—emphasis ours.)[2]

Neither the trial court nor the Court below considered the very threshold issue— Can a trial board composed not

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[2] Appendix B, p. 4a.

only of the very persons attacked politically by Petitioner but consisting of the accusers of Petitioner be construed as an "unbiased" trial body which will afford the accused a "fair and impartial determination of guilt"? Particularly when the very wording of the charge itself upon which Petitioner was tried and found guilty by his accusers contained specific charges that he had slandered, called crooked, accused of having sold the members out, used vulgar and profane language pertaining to all of the elected officials constituting his trial board, as well as constituting the sole and principal witnesses against him as to most acts he was accused and found guilty of.

We respectfully submit this proposition is fundamentally at odds with the very concept of "fair play" and thus makes a mockery of 29 USC Section 411 as the "Bill of Rights of Members of Labor Organizations."

REASONS FOR GRANTING THE WRIT

I.

The Trial Court erroneously and unnecessarily limited its review of the disciplinary procedures against Petitioner to a determination concerned solely with whether or not the Union had complied with the formal safeguards provided in 29 USC Section 411(a)(5) against improper Union disciplinary actions.

In Subchapter II of the Act, Congress articulated the means by which individual members of labor organizations may be protected in the exercise of their rights within the framework of the union organization. As a yardstick of performance, Congress saw fit to impose a requirement

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that certain basic safeguards must be met as the minimum standard of conduct to be followed in the event a union member is ". . . fined, suspended, expelled, or otherwise disciplined . . ." by his union. These minimum standards bear repeating here. They are:

A. the member must be served with written specific charges;

B. he must be given a reasonable time to prepare his defense;

C. he must be afforded a full and fair hearing.

We submit that, of the three criteria, the last is not only the most critical, but also the most difficult to evaluate and enforce. The first two criteria are somewhat more objective and thus more easily determinable from both a quantitative and qualitative standpoint. A "full and fair hearing" is not so easily adjudged in that the end result, as well as the definition of that result, are essentially subjective in nature. Thus, more than a mere recital of ritualistic incantation is necessary to give substance to the safeguard of a "full and fair hearing".

Being subjective, such a determination requires an examination into the nature of the "hearing" in order to determine whether or not within the entire context of the issue, Petitioner Reyes was afforded a fair and impartial determination of guilt by an *unbiased* trial board. We submit that more is required than the "appearance" of a fair and impartial hearing. We submit that, in order to make such a determination, the Court must go into the very essence of the trial. Particularly, it must evaluate the conduct of that trial against the background of the participants

thereof in order to determine the fairness of the trial. It is beyond peradventure that an analysis and an evaluation of the motivation of that trial must be undertaken, particularly that of the trial board itself. It can hardly be argued that the essential ingredient of a "full and fair" hearing is the impartiality and lack of bias in those individuals upon whose shoulders rests the responsibility of judgment. It then follows that, in order to determine whether or not the statutory safeguard has been met, it is essential to determine the impartiality and motivations of the persons acting as judges and their interest and involvement in the subject and subject matter being tried.

The decisions of the Trial Court and of the Court below make it readily apparent that the charges upon which Reyes was convicted were a pretext and served merely as a vehicle to convene the Union's trial board and as a convenient means of eliminating a contentious and vociferous member. His was a political trial, and his political antagonists sat as his accusers and his judge.

For the Court below to wholly ignore this fundamental consideration and avoid its impact by relying upon the canard "when reviewing such disciplinary action, the Court is not free to substitute its judgment for that of the Union" is to applaud the charade and join in complimenting "the Emperor on his new clothes."

By definition, a safeguard must provide a precautionary measure of protection. To inquire merely as to the existence of such a measure, as did the Trial Court and the Court below, without an examination as to its efficacy, results in a total misapplication of both the letter and the spirit of the statute. This Court is no stranger to elaborate

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plots and conspiracies undertaken over the years by various groups and persons in their efforts to deny the proper exercise of individual and civil rights to others. We submit that in a very few such situations is it to be found that the denial of such rights was the result of direct and overt acts. We submit that by and large, such violations of individual rights by organized groups occur behind a facade or screen of legality, and, in some cases, even that of piety.

But for the ghost of Hamlet's father would not his death have gone unavenged? But for this Court's inquiry into the true nature of Reyes' "impartial and unbiased" trial board, another voice of conscience raised against corruption in a labor union is left to go unanswered and alone.

Thus, that justice might be done requires the Court to serve justice not merely by words, but by deeds. As the Court stated in *Parks* v. *Electrical Workers*,[3]

> "Where, however, the imposition of a particular sanction is clearly unreasonable under all the circumstances and unjust to individual members of the offending Union, the *courts should not hesitate to exercise whatever jurisdiction they might have* to correct the injustice." (Emphasis ours.)

We submit that the only way the mandate of the "Bill of Rights of Members of Labor Organizations" can be fulfilled is for the courts to go beyond a superficial determination of whether or not the safeguards "existed," and

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[3] 203 F. Supp. 288, 311 (D.C. Md., 1962), rev'd on other grounds, 314 F.2d 886 (4th Cir. 1963), cert. den'd (1963), 372 U.S. 976.

to determine the nature of the "fair and impartial determination of guilt." The only way this can be done is for the Court to satisfy itself that the hearing is conducted by an unbiased and disinterested tribunal. Such a determination must be made upon the Court's careful analysis of the circumstances, and not merely by an acceptance of the "appearance of things."

II.

As a matter of law, Reyes was not afforded a full and fair hearing.

The statutes require the Union's findings to be supported by an "unbiased trial body which afforded a fair and impartial determination of guilt." The term, "full and fair hearing" has been further defined as being at a minimum, a hearing by an unbiased and disinterested tribunal.[4] Based upon its own opinion, the Court below can hardly justify a finding that Reyes was tried before an unbiased board. The Court itself found that Reyes was an active and vocal member of the Union who ". . . had previously opposed the Union management as a member of a slate of opposing candidates in a previous election which he lost and subsequently had set aside due to election irregularities . . ."[5] which group then constituted this trial board on charges he had slandered them, and accused them of being dishonest, crooked, and having sold the members out. The Court further stated in its opinion, "Reyes had also sent

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[4] *Id.*

[5] Appendix B, p. 5a.

various letters to the Department of Labor, United States Senators, and Representatives, requesting investigations of the Union, and alleging embezzlement and breach of fiduciary duties by the Union's officers."[6] In view of this background described by the Court itself, to find that Reyes had been afforded the full protection and safeguards required by the Act is incredible and rises as a specter of days preceding the Magna Carta. Again, in *Parks, supra,* the Court went on to say:

> "It is a settled principle that a member of a Union is entitled to a full and fair hearing before he is expelled, whether or not the Union Constitution so provides. . . . One of the basic requirements of a fair hearing is an *unbiased* and *disinterested* tribunal." (Emphasis ours.)[7]

It is beyond peradventure that man, in his better moments, is unable to divorce himself from his inner biases and prejudices. How then can a trial board, which consists of the same individuals purportedly slandered by Reyes, constitute an "unbiased and disinterested" tribunal, and, further, provide a fair and impartial trial? The question is rhetorical. The answer is obvious: It cannot.

By the Court's own reasoning the very people who sat on the trial board and rendered their decision against Reyes were the same people he had previously attacked as having been engaged in election irregularities, embezzlement and breach of fiduciary duties, the very gravamen of the charges of which he was tried and convicted. More-

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[6] Appendix B, pp. 5a-6a.

[7] *Supra,* at p. 307.

over, his trial board consisted of the very people whose election he was instrumental in setting aside. All of this occurred within weeks of the charges, trial and Reyes' conviction. It is inconceivable that a hearing conducted under these circumstances and a decision rendered by Reyes' own antagonists, could have been considered by the trial court and the Court below to have met the fundamental standard of fairness.

Moreover, the record demonstrates that the charges were actually initiated and brought by the International Representative who had previously threatened to do so. The International Representative did in fact initiate and implement the preparation and filing of the charges against Reyes; and it was this same individual who was present and participated in the trial and he, and the entire Executive Board, constituted the trial board which accused Reyes, heard the evidence against Reyes, and adjudged Reyes guilty of having slandered themselves. That such a procedure could be found by the Court below and the Trial Court to have met the safeguards imposed by the Act not only raises a substantial question of procedure but is beyond belief as a product of our judicial system more than a thousand years removed from the Dark Ages.

III.

The Court's erroneous interpretation of its limited authority to review the action of the Union trial board effectively negates any ostensible protection the safeguards purport to afford Petitioner and his fellow Union members.

For the Court to limit its review solely to a determination of whether or not the safeguards had been met from a mechanical standpoint jeopardizes the effectiveness of the Act in that a Union member, such as Reyes who is actively participating as an opponent to an incumbent slate and who thereby exercises his rights under the statute to the extent of becoming a thorn in the side of the incumbent, likewise subjects himself to being accused and tried by his antagonists of minor offenses which, on the whole, are essentially a pretext so that the Union, in this way, may eliminate its vociferous critics. We suggest that any member as active and as vocal as Reyes himself could be expected to commit some minor breach of Union decorum sufficient to allow his opponents to bring charges against him, find him guilty and thus eliminate him as a source of friction, thus effectively muzzling the freedom of expression, inquiry and criticism the Act purports to foster. For the Court to limit its review solely to a determination of whether or not the safeguards have been met results in a myopic one-dimensional observation with no consideration given to the underlying motivations of the parties, and effectively obviates any salutary effect the statute might generate from the standpoint of offering protection to the individual Union member who may feel it incumbent upon himself to raise the strident voice of dissent.

That the purpose of Congress was to accord such individual Union members the broadest latitude and protection in exercising their individual rights as Union members is made abundantly clear by the language of the Court in *Salzhandler* v. *Caputo*, where it asserted "freedom of expression would be stifled if those in power could claim that any charges against them were libelous and then proceed to discipline those responsible and finding that their charges were false." [8] Going further, the Court said,

> "The Congress has decided that it is in the public interest that unions be democratically governed toward that end, that discussions should be free and untrammeled and that reprisals within the union for the expression of views should be prohibited." [9]

We submit that the only way 29 USC Section 429 can be at all effective in providing Union members with the armor necessary to function as effective Union members and to maintain a responsible Union leadership, is for the Courts to impose stringent requirements of fairness in any case of trial board action.

It is particularly frustrating to the purposes and policies of the Act when the Court gives controlling significance to the superficial niceties of a Union trial board hearing and totally ignores the context in which the entire incident arose.

Petitioner, as found by the Court below, was an active and vocal political opponent of the incumbents who sat on

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[8] 316 F.2d 445, 451 (2d Cir. 1963), cert. den'd (1963), 375 U.S. 946.

[9] *Id.*

the Board. Moreover, he was instrumental in having the election in which he ran on the losing opposition slate, against his accusers, set aside for irregularities. Before the election could be re-run, he was accused, tried, convicted and suspended from any further intra-Union participation for three years. All very conveniently done under the aegis of the International Representative who had threatened "to get his card," and all propitiously concurred in by a trial board made up of those persons he purportedly slandered. If this were not enough, it was the same administration which was called to task by Petitioner for the embezzlement of Union funds, which sat in judgment of him.

Labor organizations are not created, organized or designed to the end that they may function under even the best of circumstances as quasi-judicial bodies capable of rendering generally impartial and objective verdicts when sitting in judgment of their own members. For any court to assume that its obligation is merely to determine whether or not certain mechanistic rituals have been applied in a Union's trial board procedure, without a thorough examination into the trial itself, the nature of the body sitting in judgment, its specific composition as the members of that body may relate to the accused, and the motives thereof, is to misconstrue totally the intent of the entire portion of the Act which purports to be a "Bill of Rights" for Union members.

There should be little doubt in this age of Union sophistication that a local Union trial board is perfectly capable of performing the necessary ritual which provides the aura of compliance with the statute, and yet without more, could totally misuse its quasi-judicial function, and effec-

tively silence dissent within the Union. In such a case, who then is to provide the protection for the individual Union member who has been accused, tried and judged by his political antagonists? To whom can he turn? If the courts shall bind themselves to accept all things as they may "appear to be," then the individual Union member is doomed.

We respectfully remind the Court that in reviewing the act of judgment by a Union trial body, the Court does not review the decision of a knowledgeable tribunal whose sole purpose is adjudication of disputes. The Court does not deal with trained arbitrators or members of an administrative body selected for, and possessed of, some expertise. Alas, it is not even with distinterested jurors who are selected after careful *voir dire* by trained counsel for both prosecution and accused. Instead, the Court reviews the quasi-judicial pronouncement of a trial board of laymen who personally are involved in not only the act of judgment, but in the entire circumstances leading to the trial in the first place. How then, in these circumstances can the accused expect to find redress and vindication?

For the Court below to ignore the political juxtaposition of Petitioner and his trial board; ignore the fact that the incumbent Union administration whose recent election was set aside by Petitioner's efforts, initiated the charges against Petitioner; heard the charges against Petitioner, adjudged the charges against Petitioner and, finally, suspended and fined Petitioner so that he could not even participate in the re-run election, and find that in spite of the foregoing, Petitioner was tried by an "unbiased and disinterested tribunal" is inconceivable, and serves as the final blow to any hope that dissident and vocal Union members may find some protection under the Act.

CONCLUSION

For the foregoing reasons, this Court should grant a Writ of Certiorari to review the decision below.

Respectfully submitted,

GEORGE CHERPELIS
PICKERING & CHERPELIS
920 Ortiz Drive, NE
Albuquerque, N. M. 87108
Attorney for Petitioner
Jose A. Reyes

Of Counsel:

LEONARD L. PICKERING
PICKERING & CHERPELIS

APPENDICES

APPENDIX A

Memorandum Opinion and Order

IN THE

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

No. 7981 Civil

JOSE A. REYES,

Plaintiff,

—VS.—

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION NO. 16, *et al.,*

Defendants.

The scope of the Court's review in a union disciplinary proceeding is limited to insuring that the union member received due process at the hands of the trial board. *Phillips* v. *Teamsters, Chauffeurs, etc., Local Union No. 560,* 309 F. Supp. 768, 771, 772 (1962). In most cases, if the procedural requirements of the Labor Management Reporting and Disclosure Act (LMRDA) are, in fact, met, the Court need look no further. Those standards are enumerated in *Section 101(a)(5)* of the Act. *29 U.S.C.A. § 411 (a) (1965).*

"Safeguards against improper disciplinary action. No member of any labor organization may be fined, sus-

pended, expelled, or otherwise disciplined except for nonpayment of dues by such organization or by any officer thereof unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defenses; (C) afforded a full and fair hearing."

The Court finds that the trial board complied with these requirements. Due process under the LMRDA, however, as in other contexts, requires more than adherence to mere mechanical formalities. If the disciplinary proceeding has been instituted for the purpose of denying the member rights guaranteed to him by the Act, the Court may scrutinize the entire proceeding and the surrounding circumstances to determine whether the institution of charges was improperly motivated. *Gleason* v. *Chain Service Restaurant,* 300 F. Supp. 1241, 1259 (1969).

The Court admitted testimony at the trial concerning all the circumstances surrounding the charges and union trial of Mr. Reyes. The Court finds that substantial evidence was presented at the trial which showed that the incidents upon which the charge was based was not feigned or imaginary.

The Court finds that the charge and disciplinary proceeding were brought against Jose Reyes for legitimate reasons and not for the purpose of denying him rights guaranteed by the LMRDA.

The scope of free speech guaranteed to members under the Act is broader than that guaranteed by the Constitution. Congress made it so in order to permit vigorous debate on matters of union policy. *Salzhandler* v. *Caputo,* 316 F.2d 445 (1963). The right of free speech protected

by the Act does not, however, give a member license to advance his views by threatening physical harm to elected union officials. The charges and evidence adduced at trial show that Mr. Reyes was disciplined for threatening the union president and not for advocating his views.

IT IS, THEREFORE, ORDERED and ADJUDGED that the plaintiff take nothing by reason of his complaint in this cause and action, and the merits of the case having been decided in favor of the defendant and against the plaintiff,

IT IS FURTHER ORDERED and ADJUDGED that the complaint and this cause of action be, and the same are hereby, dismissed with prejudice.

DATED this 11th day of June, 1971.

H. VEARLE PAYNE
United States District Judge

APPENDIX B

Opinion of Court of Appeals

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

JUL 1972, TERM

No. 71-1607

JOSE A. REYES,

Plaintiff-Appellant,

—v.—

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION No. 16, *et al.*,

Defendants-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

(District Court No. 7981)

Leonard L. Pickering, Albuquerque, New Mexico, for Plaintiff-Appellant.

John Quinn, Santa Fe, New Mexico, for Defendants-Appellees.

Before PHILLIPS, HILL and BARRETT, United States Circuit Judges.

HILL, Circuit Judge.

This is an appeal from a judgment, after trial to the court in the District of New Mexico, denying appellant's requested relief based on his complaint that disciplinary action imposed upon him by Laborers International Union, Local 16 (Union) was in violation of rights guaranteed under the Labor-Management Reporting and Disclosure Act, 29 U.S.C. § 401 *et seq.*

On appeal, Reyes asserts the trial court erroneously limited its review of the disciplinary proceeding to determining whether or not the union had complied with safeguards provided in 29 U.S.C. § 411(a)(5) against improper union disciplinary action. Additionally, appellant asserts error in the trial court's failure to consider his direct assault on the union's authority to impose the disciplinary sanction of three years' suspension from attending union meetings and a fine of $250. In attacking the judgment of the trial court, Reyes contends the court erred in its finding that he had been afforded a full and fair hearing by the union. He asserts this finding is not only unsupported by substantial evidence, but that it is contrary to the preponderant evidence. Reyes also contends the suit in the lower court was justified on the basis of his allegations of misreporting by the officers concerning the Union's financial matters. The trial court refused all of Reyes' requested relief and he now appeals also seeking recovery of attorney and accounting fees and costs.

The facts disclose that Reyes was an active and vocal member of the Union. He had previously opposed the Union management as a member of a slate of opposing candidates in a previous election which he lost and subsequently had set aside due to election irregularities. Reyes had also sent various letters to the Department of Labor,

United States senators and representatives, requesting investigations of the Union and alleging embezzlement and breach of fiduciary duties by the Union's officers. The incident giving rise to the charges and disciplinary action occurred on August 9, 1968. On that afternoon Reyes entered the Union meeting hall and challenged the Union president to fight him. He also threatened various other Union officials and was generally violent, profane and vulgar. That evening Reyes disrupted the Union meeting and caused it to be adjourned without ever having transacted any business. Charges were filed by the Union president against Reyes, and notice of the charges was mailed to Reyes on August 13, 1968. On August 20, 1968, Reyes requested the entire Executive Board be disqualified from participating in his hearing. A hearing was held September 14, 1968 before a Trial Board comprised of some of the members of the Executive Board, together with Fred Gardner, the International representative. After hearing testimony from both Ortega, the Union president whom Reyes had challenged, and Reyes, the Trial Board imposed the suspension and fine. On appeal to the General Executive Board of the Laborers' International Union, the fine was reduced to $100 and the three-year suspension was upheld. Reyes subsequently filed his complaint in the district court seeking further relief.

The trial court correctly interpreted its role in reviewing the union disciplinary proceeding. That court, when reviewing such disciplinary action is not free to substitute its judgment for that of the Union; it must uphold the Union's findings if supported by any evidence produced at the disciplinary trial conducted by an unbiased trial body which afforded a fair and impartial determination of guilt.[1]

---

[1] Burke v. International Bhd. of Boilermakers, 417 F.2d 1063 (9th Cir. 1969), *aff'g* 302 F. Supp. 1345 (N.D. Cal. 1967).

The trial court did not err in its self-imposed limitation on review, nor do we find error in its decision upholding the disciplinary sanctions imposed.

We further are not moved by appellant's argument that the suspension from attending meetings violated his rights as a Union member. Suspension is expressly recognized in 29 U.S.C. § 411(a)(5) as one of the disciplinary actions for which the procedural safeguards must be afforded. In Lewis v. American Fed'n of State Employees, 407 F.2d 1185 (3d Cir. 1969), *cert. denied,* 396 U.S. 866, reversing the trial court and upholding the decision of the union to expell one of its members, Judge Aldisert stated at 1193, "disciplinary provisions [of the Union constitution] which call for expulsion will be enforced so long as the constitutionally-mandated grounds for expulsion are not of themselves illegal as violating public policy . . ." We have not been apprised of any provision of the Union constitution which was violated by Reyes suspension.

Appellant lastly asserts his entitlement to costs and fees incurred in the accounting and in this action. Title 29 U.S.C. § 501(b) provides, *inter alia,* for the allocation of "a reasonable part of the recovery in any action under this subsection to pay the fees of counsel prosecuting the suit ...and...and for any expenses necessarily paid or incurred by him in connection with the litigation." Recovery under the statute has not been restricted to a limited monetary recovery by the Union, but rather has included any benefit realized by the Union.[2] The record does not reflect any benefit conferred on the Union by the institution of the action by Reyes.

Affirmed.

---

[2] Bridge Workers Local 92 v. Norris, 383 F.2d 735 (5th Cir. 1967).

APPENDIX C

JULY TERM — SEPTEMBER 7, 1972

Before Honorable David T. Lewis, Chief Judge; and Honorable Orie L. Phillips, Honorable Delmas C. Hill, Honorable Oliver Seth, Honorable William J. Holloway, Jr., Honorable Robert H. McWilliams, Honorable James E. Barrett and Honorable William E. Doyle, Circuit Judges.

No. 71-1607

JOSE A. REYES,

Plaintiff-Appellant,

v.

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION No. 16 and ELOY ORTEGA, President; *et al.*,

Defendants-Appellees.

This matter comes on for consideration of the petition for rehearing and suggestion for rehearing en banc filed by plaintiff-appellant in the captioned case.

Upon consideration whereof, the petition for rehearing is denied by Circuit Judges Phillips, Hill and Barrett, to whom the case was argued and submitted.

The petition for rehearing having been denied by the original panel to whom the case was argued and submitted and no member of the panel nor judge in regular active

service on the Court having requested that the Court be polled on rehearing en banc, Rule 35 (b), Federal Rules of Appellate Procedure, the suggestion for rehearing en banc is denied.

HOWARD K. PHILLIPS, *Clerk*

By HELEN R. BARETIA
Deputy Clerk.

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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-819

JOSE A. REYES, *Petitioner,*

v.

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION NO. 16, AND ELOY ORTEGA, President; Ray Mascarenas, Vice President; Fred Sandoval, Business Manager; John Yanes, Recording Secretary; George Quintana, Executive Board Member; Remigio Martinez, Executive Board Member; Frutoso Chavez, Secretary-Treasurer; Alex Archuleta, Past Secretary-Treasurer, and Willie Horcasitas, Member; *Respondents.*

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

JOHN F. QUINN
STANDLEY, WITT AND QUINN
342 E. Manhattan Avenue
P.O. Drawer A
Santa Fe, New Mexico 87501
Attorney for Respondents

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-819

JOSE A. REYES, *Petitioner,*

v.

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION NO. 16, AND ELOY ORTEGA, President; Ray Mascarenas, Vice President; Fred Sandoval, Business Manager; John Yanes, Recording Secretary; George Quintana, Executive Board Member; Remigio Martinez, Executive Board Member; Frutoso Chavez, Secretary-Treasurer; Alex Archuleta, Past Secretary-Treasurer, and Willie Horcasitas, Member; *Respondents.*

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Pursuant to the Court's directive, Respondents file this Response to Petitioner's Petition for a Writ of Certiorari.

OPINIONS BELOW

The Memorandum Opinion and Order of the United States District Court for the District of New Mexico is reported at 327 F. Supp. 978 (Appendix A). The opinion affirming the District Court's Opinion and Order by the Court of Appeals for the Tenth Circuit is reported at 464 F. 2d 595 (Appendix B).

Petitioner's suggestion for a Rehearing En Banc was denied (Appendix C).

STATEMENT OF THE CASE

On September 14, 1968, the Respondent Union held a union trial. Petitioner faced, and was convicted of, several charges. The cases below were attempts by Petitioner to overturn his convictions and the penalties received by him. The union trial arose because of Petitioner's prior objectionable activities.

These offenses occurred on August 8, 1968.

The afternoon of August 8, 1968, Petitioner entered the Union Meeting Hall, and challenged the Union President, Eloy Ortega, to fight him. At that time, Petitioner threatened other union officials with physical harm and abuse. The Tenth Circuit Court found that Petitioner's behavior was "generally violent, profane and vulgar."

In the evening of that same day, the Union attempted to hold a regular business meeting. Petitioner disrupted the meeting by speaking without being recognized.

Further, Petitioner refused to sit down or yield the floor upon request by the Union President. Petitioner's continually disruptive actions and obnoxious

BLEED THROUGH POOR COPY

behavior forced the union meeting to be adjourned without having transacted any business.

The Union subsequently took disciplinary action against Reyes as above described.

Written notice of the charges were mailed on August 13, 1968, to Petitioner. On August 20, 1968, Petitioner attempted to disqualify the entire Union Executive Board from participating in his hearing. Such an extraordinary request was not covered by any section of the Union's Constitution or Rules. Accordingly, the Union Executive Board requested an opinion from the International as to whether the entire Board could be disqualified. The answer was that Petitioner had no right to disqualify the entire Board.

Eloy Ortega did disqualify himself voluntarily from sitting on the Executive Board. He was President of the Union and appeared as the prosecuting witness. The members of the Executive Board at that time were Eloy Ortega, Pedro Griego, Joe Mascarenas, Fred Sandoval, Frutoso Chavez, George Quintana, John Yanes and Remigio Martinez.

Petitioner then requested an extension of time for his trial date, for the purpose of better preparing his defense. Petitioner was granted this requested extension of time by the Executive Board. The Union Trial was held on September 14, 1968. The charges against Mr. Reyes included the following:

1. Attempting to incite violence while under the influence of alcohol and threatening the local union president.
2. Disrupting the regular membership meeting held on August 8, 1968, to the point where regular union business could not be conducted.

The Union trial court found Petitioner guilty of both charges. Petitioner was suspended from the Union for three (3) years; he was not allowed to attend meetings for that period of time. Petitioner was also fined the sum of Two Hundred Fifty Dollars ($250.00). He was *not* disallowed from participating in the union's election.

The Union's Constitution allowed Petitioner to appeal the Local's decision to the International Union. Petitioner exercised that right. By letter of January 21, 1969, the International Union notified the Respondent Union of its decision. The decision to suspend Petitioner was affirmed. The fine levied upon Petitioner was reduced from Two Hundred Fifty Dollars ($250.00) to One Hundred Dollars ($100.00). Petitioner took no further administrative action. Rather, Petitioner then filed the instant lawsuit.

Petitioner argues substantive portions of his case within that portion of his Petition, styled as "Statement of the Case." Generally, Petitioner's argument is that the members of the union trial board were biased against him. Petitioner then states that this bias resulted in his not receiving a full and fair hearing.

This Court should note that no evidence of bias was ever produced by Petitioner before, during or after his union trial. Petitioner did say he "thought" the members were biased. Of course, the members of the trial board and Petitioner represented different political cliques within the union. But Petitioner could submit no evidence showing, or tending to show, bias on the part of the union trial board members.

The Respondent union operated under established remedial procedures. If a member violated union

rules, he was tried by the Executive Board—the union's elected officials.

Petitioner attempted to take advantage of this procedure by the simple expedient of offering to fight the union president and insulting the remainder of the union's elected officials. When Petitioner subsequently disrupted the union's business meeting and the union instituted disciplinary proceedings, Petitioner sought to avoid being disciplined at all by posturing that the union's elected officials were biased because of his offensive behavior. Thus, Petitioner would have, at once, completely frozen the union's established remedial procedures and avoided being punished for behavior which was offensive to the extent that he now claims it must have biased the Board members against him.

The opinion and order rendered by the District Court for the District of New Mexico reflects the extent to which the Court went to allow Petitioner to show his rights were violated by the union proceeding (See Appendix A). The Court there stated as follows:

> "The Court admitted testimony at the trial concerning all the circumstances surrounding the charges and union trial of Mr. Reyes. The Court finds that substantial evidence was presented at the trial which showed that the incidents upon which the charge was based were not feigned or imaginary.
>
> The Court finds that the charge and disciplinary proceedings were brought against Jose Reyes for legitimate reasons and not for the purpose of denying him rights guaranteed by the LMRDA." (Appendix A, p. 2a)

This Court should note here that the District Court also stated that due process under the Labor-Manage-

ment Relations Disclosure Act requires more than an adherence to mere mechanical formalities. The Court also held that the scope of free speech guaranteed to members under the Act is even broader than that under the United States Constitution. The Court then held as follows:

> "The right of free speech protected by the act does not however, give a member license to advance his views by threatening physical harm to elected union officials. *The charges and evidence adduced at trial show that Mr. Reyes was disciplined for threatening the union president and not for advocating his views.*" (Appendix A, p. 2a; Emphasis supplied.)

On appeal, the judgment in favor of Respondents was upheld. The Tenth Circuit Court stated as follows:

> "The incident giving rise to the charges and disciplinary action occurred on August 9, 1968. On that afternoon Reyes entered the Union Meeting Hall and challenged the Union President to fight him. He also threatened various other officials and was generally violent, profane and vulgar. That evening Reyes disrupted the Union meeting and caused it to be adjourned without ever having transacted any business." (Appendix B, p. 4a)

The Court then reviewed the procedure followed before, during and after the union trial of Petitioner. Regarding the scope of review of the disciplinary proceedings by the lower court, the Tenth Circuit Court stated as follows:

> "The trial court correctly interpreted its role in reviewing the union disciplinary proceeding. That

court, when reviewing such disciplinary action, is not free to substitute its judgment for that of the union; it must uphold the Union's findings if supported by any evidence produced at the disciplinary trial conducted by an unbiased trial body which afforded a fair and impartial determination of guilt. The trial court did not err in its self-imposed limitation on review, nor do we find error in its decision upholding the disciplinary sanctions imposed." (Appendix B, p. 5a)

The trial court heard extensive testimony regarding the lack of bias on the part of the members of the Executive Board in dealing with Petitioner's disciplinary proceedings. Based upon the evidence, the trial court concluded that Petitioner received a "full and fair hearing" during his disciplinary proceedings.

REASONS FOR REFUSING THE WRIT

I

Petitioner Has Failed To Bring Himself Within the Purview of Supreme Court Rule 19 (1)(b)

While Petitioner herein makes numerous factual allegations concerning the proceedings, many of which find no support in the record as discussed elsewhere herein, he makes no effort to comply with Rule 19 of this Court. Nowhere does he show that there is any conflict between the decision herein and a similar decision in any other Circuit; nowhere does he demonstrate that the decision herein is in conflict with any decision of this Court; nowhere does he show that any important question of Federal Law has been presented which has not been, but should be, decided by the Supreme Court. Neither has he shown any departure from recognized procedure by the Court of Appeals, or sanction thereof

by the Court of Appeals on the part of the District Court to invoke the Court's supervisory powers.

Respondent submits that if Petitioner has researched the question and discovered any authority which would bring him within the purview of Rule 19 (1)(b), he should divulge it. Since he has not, he has failed to carry his burden and the Writ should not issue.

II

A Writ of Certiorari to the Court of Appeals Is Untimely Since Said Court No Longer Has Jurisdiction of the Case

On September 7, 1972, Petitioner's motion for rehearing and suggestion for rehearing *en banc* was denied (Appendix C). On September 20, 1972, the mandate was stayed until October 20, (Appendix D) and on October 24 the mandate was further stayed until November 15 (Appendix E). On November 16, the Court of Appeals issued its mandate, thus vesting jurisdiction once again in the United States District Court for the District of New Mexico (Appendix F). This Petition was filed on December 4, 1972.

On February 16, 1973, Respondents received Notice from Clerk of the District Court regarding the disposition of the exhibits in this case (Appendix G). Respondents are unaware of the present disposition of said exhibits, but would point out that Rule 21, Rules of the United States District Court for the District of New Mexico, provides that the Clerk may destroy them, and there may not now be a full record for review.

Thus, jurisdiction is now in the District Court and a Writ of Certiorari to the Court of Appeals would be of no effect.

III

he Trial Court Applied the Correct Test in Determining Its Scope of Review of the Disciplinary Procedures Against Petitioner

This Court should note what Petitioner attempts ere. This Court is requested to look beyond the ecord of this case. Petitioner requests that this Court valuate his union trial "against the background of the articipants." Petitioner requests that this Court determine the impartiality and motivations of the ersons acting as judges and their interest and involvement in the subject, and subject matter being tried."

Petitioner thus invites the Court into a quagmire. ubstantial evidence exists in the trial court record to efute Petitioner's allegations of bias. However, Petiioner would have the Court go beyond the record and mpute attitudes to the trial board members. The angers are obvious and substantial.

The issue here is as follows:

1. Did the trial court and the Tenth Circuit Court apply the correct rule regarding the scope of judicial review of the union trial?

The standards which the Respondent Union had to atisfy during its disciplinary proceeding against Petiioner are found in 29 USC Section 411(a)(5). They re as follows:

> (5) safeguards against improper disciplinary action.—No member of any labor organization may be fined, suspended, expelled or otherwise disciplined . . . unless such member has been,
>
> (a) served with written specific charges;
>
> (b) given a reasonable time to prepare his defense;
>
> (c) afforded a full and fair hearing."

Petitioner does not attack the first two criteria.

What is the definition of a "full and fair hearing"? The elements of a full and fair hearing resemble those elements of constitutional due process. That is, they include notice, reasonable opportunity to be heard, the right to present evidence and the right to confront witnesses, and cross-examine them. *Parks* v. *International Brotherhood of Electrical Workers,* 314 F. 2d 886 (C.A. Md. 1963), cert. den. 835 S. Ct. 1111, 372 U.S. 976, 10 L. Ed. 2d 142; *Smith* v. *General Truck-Drivers, Warehousemen and Helpers Union Local 467 of San Bernardino and Riverside Counties,* 181 F. Supp. 14 (D.C. Col. 1960).

Upon appeal from such a proceeding, the Court is neither authorized nor required to weigh evidence presented at the union trial. The Court may not substitute its judgment regarding the credibility of the witnesses and the evidence presented at the union trial. *Phillips* v. *Teamsters, Chauffeurs, Warehousemen and Helpers Local No. 560,* 209 F. Supp. 768 (D.C. N.J. 1962); *Burke* v. *International Brotherhood of Boilermakers,* 417 F. 2d 1063 (9th Cir. 1969), *aff'g* 302 F. Supp. 1345 (N.D. Cal. 1967).

Petitioner received written notice of the charges. He requested and obtained an extension of time in order to better prepare his defense. He testified or was given the opportunity to testify, in his own behalf. He confronted the witnesses who testified against him. He was allowed the opportunity to cross-examine the witness.

Under the above authority, Respondents submit that the disciplinary proceedings against Petitioner satisfied due process requirements. Respondents further

submit that the Courts below applied the correct test in determining the scope of inquiry into the disciplinary hearing for Petitioner. However, this Court should note the extent to which the trial court went in allowing Petitioner to present evidence regarding the fairness of his union trial. The trial court stated that due process under the Labor-Management Relations Disclosure Act requires more than adherence to mere technical formalities. Further, the trial court stated that the court could properly scrutinize the union trial to determine whether the institution of charges was improperly motivated. The trial court then stated as follows:

> "*The Court admitted testimony at the trial concerning all the circumstances surrounding the charges and union trial of Mr. Reyes.* The court finds that substantial evidence was presented at the trial which showed that the incidents upon which the charge was based was not feigned or imaginary.
>
> The Court finds that the charge and disciplinary proceeding were brought against Jose Reyes for legitimate reasons and not for the purpose of denying him rights guaranteed by the LMRDA. (Appendix A, p. 2a; Emphasis supplied.)

The language flatly refutes Petitioner's allegation that his union trial was for political reasons. Further, the language refutes Petitioner's allegation that the record reflects any bias or prejudgments by the union trial board members. The trial court allowed into the record all the evidence Petitioner could muster regarding his allegation of not receiving a full and fair union trial. Upon a review of all of the evidence, the trial court held against Petitioner.

Petitioner now requests this Court to ignore the trial court's efforts, the record, and the above authority. Petitioner's request should fail.

IV

Petitioner Was Entitled To, and Received, a Full and Fair Hearing During This Disciplinary Proceeding

Petitioner's argument here is apparently identical to that made under Point I of his Petition. The only added element seems to be that he failed to receive a full and fair hearing as a matter of law. That is, Petitioner alleges that the union trial board was prejudicial against him as a matter of law.

The argument is confusing. As argued above, the trial court went into the circumstances surrounding Petitioner's union trial extensively. Apparently, realizing the import of the trial court's action, Petitioner attempts to sidestep the problem by arguing that, as a matter of law, the trial board members were biased.

Petitioner cites no authority to support this proposition. The *Parks* case, supra, is not authority for the proposition.

However, Respondents do wish to call the Court's attention to several misstatements of fact by Petitioner under this point of fact.

Petitioner alleges that he attacked the members as "having been in election irregularities, embezzlement and breach of fiduciary duties" prior to his union trial.

This statement is not true. The man who was accused of embezzlement at a time prior to Petitioner's

union trial was Alex Archuleta. Mr. Archuleta didn't even sit on the board which heard the evidence at Petitioner's union trial. Further, Mr. Archuleta was not a member of the union executive board. No other member of the board was accused of embezzling union funds.

Further, no testimony was adduced showing or hinting that any of the other board members were accused of election irregularities or a breach of fiduciary duties.

The record does not reflect that the union's International Representative initiated and brought the charges against Petitioner. The charges against Petitioner were initiated and brought by Eloy Ortega, the union president. The record does reflect that Eloy Ortega requested help from the International Representative in assuring that Mr. Ortega properly drew the written charges against petitioner. The International Representative was approached solely to assure that the charges were procedurally proper under the union constitution and by-laws.

Petitioner further implies that the trial was held for the sole purpose of disallowing his participation in a union election. (See Petitioner's Petition, pp. 5, 19). The trial court record does not so reflect. Indeed, Petitioner was a candidate in the second election, as reflected by the ballots for the first and second union elections. (See Appendices H and I) Petitioner campaigned actively throughout the state. He was defeated. Petitioner's allegation that he was disallowed from participating in the second union election is a misstatement of fact.

V

The Tenth Circuit Court's Interpretation of the Scope of Review of the Union Trial Board's Disciplinary Action Was Correct; the District Court's Inquiry Into the Facts Satisfied Any Possible Requirements Under the Labor-Management Relations Disclosure Act

The initial weakness in Petitioner's argument here is that he ignores the fact that the trial court heard evidence regarding the charges made against Petitioner by his union. Further, the trial court heard evidence regarding the unbiased and disinterested nature of the executive board members. The trial court's opinion states clearly that the trial court heard evidence and satisfied itself that Petitioner was not prejudiced under either issue.

Further, Petitioner attempts to impress this court with how "minor" Petitioner's offenses against the union were. The argument is remarkable. It is uncontradicted (and was reflected in the trial court's opinion) that Petitioner was disciplined for threatening physical harm to union officials (Appendix A, p. 2a). Further, Petitioner was disciplined because he disrupted a regular union business meeting to an extent that it had to be adjourned before transacting any business. (Appendix B, p. 4a)

Petitioner's argument that these offenses must be balanced against his freedom of speech is correct. The trial court balanced these considerations, and held against Petitioner.

CONCLUSION

For the foregoing reasons Respondents respectfully submit that this Court should refuse to grant a Writ of Certiorari to review the decision below.

Respectfully submitted,

JOHN F. QUINN
STANDLEY, WITT AND QUINN
342 E. Manhattan Avenue
P.O. Drawer A
Santa Fe, New Mexico 87501

Attorney for Respondents

APPENDIX

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

No. 7981 Civil

JOSE A. REYES, *Plaintiff*,

v.

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION NO. 16, et al., *Defendants*.

Memorandum Opinion and Order

The scope of the Court's review in a union disciplinary proceeding is limited to insuring that the union member received due process at the hands of the trial board. *Phillips* v. *Teamsters, Chauffeurs, etc., Local Union No. 560*, 309 F.Supp. 768, 771, 772 (1962). In most cases, if the procedural requirements of the Labor-Management Reporting and Disclosure Act (LMRDA) are, in fact, met, the Court need look no further. Those standards are enumerated in *Section 101(a)(5)* of the Act. *29 U.S.C.A. § 411(a) (1965).*

> "Safeguards against improper disciplinary action. No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for non-payment of dues by such organization or by any officer thereof unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defenses; (C) afforded a full and fair hearing."

The Court finds that the trial board complied with these requirements. Due process under the LMRDA, however, as in other contexts, requires more than adherence to mere mechanical formalities. If the disciplinary proceeding has been instituted for the purpose of denying the member rights guaranteed to him by the Act, the Court may scrutinize the entire proceeding and the surrounding circum-

stances to determine whether the institution of charges was improperly motivated. *Gleason* v. *Chain Service Restaurant*, 300 F.Supp. 1241, 1259 (1969).

The Court admitted testimony at the trial concerning all the circumstances surrounding the charges and union trial of Mr. Reyes. The Court finds that substantial evidence was presented at the trial which showed that the incidents upon which the charge was based were not feigned or imaginary.

The Court finds that the charge and disciplinary proceeding were brought against Jose Reyes for legitimate reasons and not for the purpose of denying him rights guaranteed by the LMRDA.

The scope of free speech guaranteed to members under the Act is broader than that guaranteed by the Constitution. Congress made it so in order to permit vigorous debate on matters of union policy. *Salzhandler* v. *Caputo*, 316 F.2d 445 (1963). The right of free speech protected by the Act does not, however, give a member license to advance his views by threatening physical harm to elected union officials. The charges and evidence adduced at trial show that Mr. Reyes was disciplined for threatening the union president and not for advocating his views.

It Is, Therefore, Ordered and Adjudged that the plaintiff take nothing by reason of his complaint in this cause and action, and the merits of the case having been decided in favor of the defendant and against the plaintiff.

It Is Further Ordered and Adjudged that the complaint and this cause of action be, and the same are hereby, dismissed with prejudice.

Dated this 11th day of June, 1971.

/s/ H. Vearle Payne
United States District Judge

APPENDIX B

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

JULY 1972, TERM

No. 71-1607

JOSE A. REYES, *Plaintiff-Appellant,*

v.

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION No. 16, et al., *Defendants-Appellees.*

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

(District Court No. 7981)

Leonard L. Pickering, Albuquerque, New Mexico, for Plaintiff-Appellant.

John Quinn, Santa Fe, New Mexico, for Defendants-Appellees.

Before PHILLIPS, HILL and BARRETT, United States Circuit Judges.

HILL, Circuit Judge.

This is an appeal from a judgment, after trial to the court in the District of New Mexico, denying appellant's requested relief based on his complaint that disciplinary action imposed upon him by Laborers International Union, Local 16 (Union) was in violation of rights guaranteed under the Labor-Management Reporting and Disclosure Act, 29 U.S.C. § 401 *et seq.*

On appeal, Reyes asserts the trial court erroneously limited its review of the disciplinary proceeding to determin-

ing whether or not the union had complied with safeguards provided in 29 U.S.C. § 411(a)(5) against improper union disciplinary action. Additionally, appellant asserts error in the trial court's failure to consider his direct assault on the union's authority to impose the disciplinary sanction of three years' suspension from attending union meetings and a fine of $250. In attacking the judgment of the trial court, Reyes contends the court erred in its finding that he had been afforded a full and fair hearing by the union. He asserts this finding is not only unsupported by substantial evidence, but that it is contrary to the preponderant evidence. Reyes also contends the suit in the lower court was justified on the basis of his allegations of misreporting by the officers concerning the Union's financial matters. The trial court refused all of Reyes' requested relief and he now appeals also seeking recovery of attorney and accounting fees and costs.

The facts disclose that Reyes was an active and vocal member of the Union. He had previously opposed the Union management as a member of a slate of opposing candidates in a previous election which he lost and subsequently had set aside due to election irregularities. Reyes had also sent various letters to the Department of Labor, United States senators and representatives, requesting investigations of the Union and alleging embezzlement and breach of fiduciary duties by the Union's officers. The incident giving rise to the charges and disciplinary action occurred on August 9, 1968. On that afternoon Reyes entered the Union meeting hall and challenged the Union president to fight him. He also threatened various other Union officials and was generally violent, profane and vulgar. That evening Reyes disrupted the Union meeting and caused it to be adjourned without ever having transacted any business. Charges were filed by the Union president against Reyes, and notice of the charges was mailed to Reyes on August 13, 1968. On August 20, 1968, Reyes requested the entire Executive Board be disqualified

from participating in his hearing. A hearing was held September 14, 1968 before a Trial Board comprised of some of the members of the Executive Board, together with Fred Gardner, the International representative. After hearing testimony from both Ortega, the Union president whom Reyes had challenged, and Reyes, the Trial Board imposed the suspension and fine. On appeal to the General Executive Board of the Laborers' International Union, the fine was reduced to $100 and the three-year suspension was upheld. Reyes subsequently filed his complaint in the district court seeking further relief.

The trial court correctly interpreted its role in reviewing the union disciplinary proceeding. That court, when reviewing such disciplinary action is not free to substitute its judgment for that of the Union; it must uphold the Union's findings if supported by any evidence produced at the disciplinary trial conducted by an unbiased trial body which afforded a fair and impartial determination of guilt.[1] The trial court did not err in its self-imposed limitation on review, nor do we find error in its decision upholding the disciplinary sanctions imposed.

We further are not moved by appellant's argument that the suspension from attending meetings violated his rights as a Union member. Suspension is expressly recognized in 29 U.S.C. § 411(a)(5) as one of the disciplinary actions for which the procedural safeguards must be afforded. In Lewis v. American Fed'n of State Employees, 407 F.2d 1185 (3d Cir. 1969), *cert. denied*, 396 U.S. 866, reversing the trial court and upholding the decision of the union to expell one of its members, Judge Aldisert stated at 1193, "disciplinary provisions [of the Union constitution] which call for expulsion will be enforced so long as the constitutionally-mandated grounds for expulsion are not of them-

[1] Burke v. International Bhd. of Boilermakers, 417 F.2d 1063 (9th Cir. 1969), *aff'g* 302 F.Supp. 1345 (N.D.Cal. 1967).

selves illegal as violating public policy . . . ." We have not been apprised of any provision of the Union constitution which was violated by Reyes suspension.

Appellant lastly asserts his entitlement to costs and fees incurred in the accounting and in this action. Title 29 U.S.C. § 501(b) provides, *inter alia*, for the allocation of "a reasonable part of the recovery in any action under this subsection to pay the fees of counsel prosecuting the suit . . . and . . . for any expenses necessarily paid or incurred by him in connection with the litigation." Recovery under the statute has not been restricted to a limited monetary recovery by the Union, but rather has included any benefit realized by the Union.[2] The record does not reflect any benefit conferred on the Union by the institution of the action by Reyes.

Affirmed.

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[2] Bridge Workers Local 92 v. Norris, 383 F.2d 735 (5th Cir. 1967).

APPENDIX C

JULY TERM—SEPTEMBER 7, 1972

Before Honorable David T. Lewis, Chief Judge; and Honorable Orie L. Phillips, Honorable Delmas C. Hill, Honorable Oliver Seth, Honorable William J. Holloway, Jr., Honorable Robert H. McWilliams, Honorable James E. Barrett and Honorable William E. Doyle, Circuit Judges.

No. 71-1607

JOSE A. REYES, *Plaintiff-Appellant,*

v.

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION NO. 16 and ELOY ORTEGA, President; et al., *Defendants-Appellees.*

This matter comes on for consideration of the petition for rehearing and suggestion for rehearing en banc filed by plaintiff-appellant in the captioned case.

Upon consideration whereof, the petition for rehearing is denied by Circuit Judges Phillips, Hill and Barrett, to whom the case was argued and submitted.

The petition for rehearing having been denied by the original panel to whom the case was argued and submitted and no member of the panel nor judge in regular active service on the Court having requested that the Court be polled on rehearing en banc, Rule 35(b), Federal Rules of Appellate Procedure, the suggestion for rehearing en banc is denied.

HOWARD K. PHILLIPS, *Clerk.*

By /s/ HELEN R. BARTHA
Deputy Clerk.

APPENDIX D

SEPTEMBER TERM—SEPTEMBER 20, 1972

Before Honorable Orie L. Phillips, Honorable Delmas C. Hill, and Honorable James E. Barrett, Circuit Judges.

No. 71-1607

JOSE A. REYES, *Plaintiff-Appellant,*

v.

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION No. 16, and ELOY ORTEGA, President, RAY MASCARENAS, Vice President, FRED SANDOVAL, Business Manager, JOHN YANES, Recording Secretary, GEORGE QUINTANA, Executive Board Member, REMIGIO MARTINEZ, Executive Board Member, FRUTOSO CHAVEZ, Secretary-Treasurer, and WILLIE HORCASITAS, Member, *Defendants-Appellees.*

Upon consideration of the motion of Appellant Jose A. Reyes for stay of mandate pending certiorari, it is

ORDERED that the mandate is stayed until October 20, 1972 and that if on or before that date there is filed with the Clerk of the Court of Appeals a notice from the Clerk of the Supreme Court of the United States that appellant has timely filed a Petition for Writ of Certiorari in the Supreme Court, the stay shall continue until final disposition by the Supreme Court.

/s/ HOWARD K. PHILLIPS
Howard K. Phillips
Clerk

APPENDIX E

SEPTEMBER TERM—OCTOBER 24, 1972

Before Honorable Orie L. Phillips, Honorable Delmas C. Hill, and Honorable James E. Barrett, Circuit Judges.

No. 71-1607

JOSE A. REYES, *Plaintiff-Appellant,*

v.

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION No. 16, et al., *Defendants-Appellees.*

Upon consideration of Appellant's motion for further stay of mandate pending certiorari, it is

ORDERED that the mandate is stayed until November 15, 1972, and that if on or before that date there is filed with the Clerk of the Court of Appeals a notice from the Clerk of the Supreme Court of the United States that appellant has timely filed a Petition for Writ of Certiorari in the Supreme Court, the stay shall continue until final disposition by the Supreme Court.

/s/ HOWARD K. PHILLIPS
Howard K. Phillips
Clerk

APPENDIX F

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT
OFFICE OF THE CLERK
DENVER, COLORADO 80202

November 16, 1972

Mr. E. E. Greeson, Clerk
United States District Court
P. O. Box 689
Albuquerque, New Mexico 87103

Re: No. 71-1607, Jose A. Reyes v. Laborers' International Union of North America, etc., et al. (District Court No. 7981)

Dear Mr. Greeson:

In accordance with Rule 41 of the Federal Rules of Appellate Procedure, effective July 1, 1968, I am enclosing a certified copy of the judgment and a copy of the opinion, which shall constitute the mandate of this Court. You will please file this mandate in the records of your court immediately upon receipt of it by direction of this Court. I am also enclosing a form of receipt for you to sign and return to this office.

The original record on appeal will be returned to you at a later date.

Very truly yours,

/s/ HOWARD K. PHILLIPS
Howard K. Phillips,
Clerk

HKP/li

Enclosures

cc: Leonard L. Pickering, Esquire, Attorney at Law, 920 Ortiz Drive, N.E., Albuquerque, New Mexico 87108

John F. Quinn, Esquire, Attorney at Law, 342 East Manhattan Avenue, Santa Fe, New Mexico 87501

APPENDIX G

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO
OFFICE OF THE CLERK
ALBUQUERQUE, NEW MEXICO

E.E. GREESON
CLERK

P.O. BOX 589

February 14, 1973

Mr. Leonard L. Pickering
Attorney at Law
920 Ortiz N.E.
Albuquerque, N. M. 87108

Mr. John Quinn
Attorney at Law
P. O. Drawer A
Santa Fe, New Mexico 87501

Gentlemen:

Re: Reyes vs. Laborers' Int'l et al

Case Number 7981 Civil

Local rules of this court numbered 8(d) and 21(e) directs that exhibits and depositions, oral and written interrogatories be returned to the parties after judgment is final.

Please advise whether you desire (exhibits) (depositions) (interrogatories) returned. If I do not receive a response within two weeks advising as to disposition, I will assume the same may be disposed of by my office.

Sincerely,

E. E. GREESON, *Clerk*

By MAYRIL WARNER
Deputy Clerk

Appendix H

OFFICIAL BALLOT

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL NO. 16

Election of Officers Ballot for a term of Three Years

Election held June 7, 8, 9, 10, 11 and 12, 1968

For President — Vote for One

ELOY ORTEGA	☐
ARTHUR ANAYA	☒
PABLO J. VALDEZ	☐

For Vice-President — Vote for One

(JOE) IGNACIO APODACA	☒
RAY JOE MASCARENAS	☐
HERMAN MAESTAS	☐
ANTONIO A. (TONY) ROMERO	☐

For Recording Secretary — Vote for One

JOHN YANES	☐

For Secretary-Treasurer — Vote for One

JOSE A. REYES	☐
JACINTO GALLEGOS	☒
ALEX ARCHULETA	☐
FRUTOSO CHAVEZ	☐

For Business Manager — Vote for One

JESSE McCONNELL	☐
ALFRED SANDOVAL	☒
JUAN JARAMILLO	☐
ALBERT ESQUIBEL	☐
CELESTINO MARTINEZ	☐

For Sergeant-at-Arms — Vote for One

J. R. RODRIGUEZ	☒

For Auditors — Vote for Three

JESUS ORNELAS	☐
JOE CHAVEZ	☐
LAZARO HERRERA	☒

For Executive Board — Vote for Two

JOE E. VASQUEZ	☐
GEORGE QUINTANA	☒
JOE R. BACA	☐
FRANK PADILLA	☐
PETE GRIEGO	☐
REMIGIO MARTINEZ	☐
[illegible]	☐

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Appendix I

OFFICIAL BALLOT

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL NO. 16

Election of Officers Ballot for a term of Three Years

Election held October 4, 5, 6, 7, 8, and 9, 1968

For President — Vote for One

- ELOY ORTEGA [X]
- ARTHUR ANAYA [ ]
- PABLO J. VALDEZ [ ]

For Vice-President — Vote for One

- JOE IGNACIO APODACA [ ]
- RAY JOE MASCARENAS [X]
- HERMAN MAESTAS [ ]
- ANTONIO A. (TONY) ROMERO [ ]

For Recording Secretary — Vote for One

- JOHN YANES [X]

For Secretary-Treasurer — Vote for One

- JOSE A. REYES [ ]
- JACINTO GALLEGOS [ ]
- ALEX ARCHULETA [ ]
- FRUTOSO CHAVEZ [X]

For Business Manager — Vote for One

- JESSE McCONNELL [ ]
- ALFRED SANDOVAL [X]
- JUAN JARAMILLO [ ]
- ALBERT ESQUIBEL [ ]
- CELESTINO MARTINEZ [ ]

For Sergeant-at-Arms — Vote for One

- J. R. RODRIGUEZ [ ]

For Auditors —Vote for Three

- JESUS ORNELAS [ ]
- JOE CHAVEZ [ ]
- LAZARO HERRERA [ ]

For Executive Board — Vote for Two

- JOE E. VASQUEZ [ ]
- GEORGE QUINTANA [X]
- JOE R. BACA [ ]
- FRANK PADILLA [ ]
- PETE GRIEGO [ ]
- REMIGIO MARTINEZ [X]
- [ ]

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